

completion, and resubmission to JAG(13) or JAR. If the complaint is not corrected or completed, and resubmitted within 30 days of the date of its return, the Rules Counsel may close the file without further action. JAG(13) and JAR will maintain copies of all correspondence relating to the return and resubmission of a complaint, and shall notify the covered attorney concerned if and when the Rules Counsel takes action to close the file.

(2) Complaints that comply with the requirements shall be further reviewed by the Rules Counsel to determine whether the complaint:

(i) Establishes probable cause to believe that a violation of this part or of the Judicial Code has occurred; or

(ii) Alleges ineffective assistance of counsel, or other violations of subpart B of this part, as a matter of defense in a court-martial, administrative separation, or nonjudicial punishment proceeding. If so, the Rules Counsel shall forward a copy of the complaint to the proper appellate authority for appropriate action and comment.

(e) The Rules Counsel shall close the file without further action if the complaint does not establish probable cause to believe that a violation has occurred. The Rules Counsel shall notify the complainant and the covered attorney concerned that the file has been closed. JAG(13) and JAR will maintain copies of all correspondence related to the closing of the file.

(f) The Rules Counsel may close the file if there is a determination that the complaint establishes probable cause but the violation is of a minor or technical nature appropriately addressed through corrective counseling. The Rules Counsel shall report any such decision to the JAG. The Rules Counsel shall ensure the covered attorney concerned receives appropriate counseling and shall notify the complainant and the covered attorney concerned that the file has been closed. JAG(13) and JAR will maintain copies of all correspondence related to the closing of the file. The covered attorney concerned is responsible, under these circumstances, to determine if his or her Federal, state, or local licensing authority requires reporting of such action.

§ 776.81 Charges.

(a) If the Rules Counsel determines that there is probable cause to believe that a violation of this part or of the Code of Judicial Conduct has occurred, the Rules Counsel shall draft charges alleging violations of this part or of the Code of Judicial Conduct and forward the charges, together with the original complaint and any allied papers, as follows:

(1) In cases involving Marine Corps attorneys not serving as defense counsel or attached to Navy units, to the officer exercising general court-martial jurisdiction (OEGCMJ) over the charged covered attorney, and request, on behalf of JAG, that the OEGCMJ appoint a covered attorney (normally the concerned attorney's supervisor) to conduct a preliminary inquiry into the matter;

(2) In all other cases, to the supervisory attorney in the charged attorney's chain of command (or such other officer as JAG may designate), and direct, on behalf of JAG, the supervisory attorney to conduct a preliminary inquiry into the matter.

(b) The Rules Counsel shall provide a copy of the charges, complaint, and any allied papers to the covered attorney against whom the complaint is made and notify him or her that a preliminary inquiry will be conducted. Service of complaints, charges, and other materials shall be made by personal service, or by registered or certified mail sent to the covered attorney's last known address reflected in official Navy or Marine Corps records or in the records of the state bar(s) which licensed the attorney to practice law.

(c) The Rules Counsel shall also provide a copy of the charges to the commanding officer, or equivalent, of the covered USG attorney concerned if the complaint involves a covered USG attorney on active duty or in civilian Federal service.

(d) The Rules Counsel shall also forward a copy of the charges as follows:

(1) In cases involving Navy or Marine Corps judge advocates serving in Naval Legal Service Command (NLSC) units, to Vice Commander, NLSC;

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(2) In cases involving Navy attorneys serving in Marine Corps units, or involving Marine Corps attorneys serving in Navy units, to the Commandant of the Marine Corps (Attn: JA);

(3) In cases involving members of the Navy-Marine Corps Trial Judiciary, to the Trial Judiciary Chief Judge; and

(4) To the appropriate military service attorney discipline section if the complaint involves covered attorneys certified by the Judge Advocates General/Chief Counsel of the other uniformed services.

§ 776.82 Interim suspension.

(a) Where the Rules Counsel determines there is probable cause to believe that a covered attorney has committed misconduct or other violations of this part, and poses a substantial threat of irreparable harm to his or her clients or the orderly administration of military justice, the Rules Counsel shall so advise the JAG. Examples of when a covered attorney may pose a “substantial threat of irreparable harm” include:

(1) When charged with the commission of a crime which involves moral turpitude or reflects adversely upon the covered attorney’s fitness to practice law, and where substantial evidence exists to support the charge;

(2) When engaged in the unauthorized practice of law (e.g., failure to maintain good standing in accordance with § 776.71 of this part); or

(3) Where unable to represent client interests competently.

(b) Upon receipt of information from the Rules Counsel, JAG may order the covered attorney to show cause why he or she should not face interim suspension, pending completion of a professional responsibility investigation. The covered attorney shall have 10 calendar days in which to respond.

(c) If an order to show cause has been issued under paragraph (b) of this section, and the period for response has passed without a response, or after consideration of any response and finding sufficient evidence demonstrating probable cause to believe that the covered attorney is guilty of misconduct and poses a substantial threat of irreparable harm to his or her client or the orderly administration of military justice,

JAG may direct an interim suspension of the covered attorney’s certification under Articles 26(b) or 27(b), UCMJ, or R.C.M. 502(d)(3), or the authority to provide legal assistance, pending the results of the investigation and final action under this instruction.

(d) Within 10 days of JAG’s decision to impose an interim suspension, the covered attorney may request an opportunity to be heard before an impartial officer designated by JAG. Where so requested, that opportunity will be scheduled within 10 calendar days of the request. The designated officer shall receive any information that the covered attorney chooses to submit on the limited issue of whether to continue the interim suspension. The designated officer shall submit a recommendation to JAG within 5 calendar days of conclusion.

(e) A covered attorney may, based upon a claim of changed circumstances or newly discovered evidence, petition for dissolution or amendment of JAG’s imposition of interim suspension.

(f) Any professional responsibility investigation involving a covered attorney who has been suspended pursuant to this section shall proceed and be concluded without appreciable delay. However, JAG may determine it necessary to await completion of a related criminal investigation or proceeding, or completion of a professional responsibility action initiated by other licensing authorities. In such cases, JAG shall cause the Rules Counsel to so notify the covered attorney under interim suspension. Where necessary, continuation of the interim suspension shall be reviewed by JAG every 6 months.

§ 776.83 Preliminary inquiry.

(a) The purpose of the preliminary inquiry is to determine whether, in the opinion of the officer appointed to conduct the preliminary inquiry (PIO), the questioned conduct occurred and, if so, whether it constitutes a violation of this part or the Code of Judicial Conduct. The PIO is to recommend appropriate action in cases of substantiated violations.

(b) Upon receipt of the complaint and charges, the PIO shall promptly investigate the charges, generally following